

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

LA MICHOACANA NATURAL, LLC,)	
)	Civil Action No. 3:17cv727
Plaintiff,)	
)	
v.)	
)	MOTION TO DISMISS
LUIS MAESTRE, ADRIANA TERAN, and)	PURSUANT TO
LA LINDA MICHAOCANA, sole proprietorship,)	RULE 12(B)(2)
)	
)	
Defendants.)	
)	
)	

NOW COME Luis Roberto Maestre and Adriana Maestre individually, and Luis Roberto Maestre in his capacity as authorized agent of the sole proprietorship identified in the Complaint as “d/b/a La Michoacana and/or La Linda Michoacana” (“Movants”), by and through counsel appearing for the limited purpose of this Motion and move the Court to dismiss the Complaint for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2). Accordingly, Movants show the Court as follows:

1. Movants are not the owners of the sole proprietorship operating as the restaurant La Linda Michoacana. Movant Luis Roberto Maestre is currently acting as custodian for this sole proprietorship established by his brother, Luis Alejandro Maestre, who has resided since 2016 in Colombia, South America.

2. “Adriana Teran” is not the name of either of the individual Movants. Adriana Maestre was formerly “Adriana Teran,” prior to marriage to Luis Roberto Maestre.

3. Adriana Maestre is not, nor has she ever been, authorized as an agent for the conduct of the business of the sole proprietorship named as Defendant in this matter.
4. The Complaint and Summons in this matter were delivered to “Adriana Teran” at the business location of La Linda Michoacana in Concord, North Carolina. The documents were received and/or signed for by an employee of the sole proprietorship who did not speak English, had not been granted any authority from the sole proprietor to accept service for legal purposes, nor was the delivery addressed to any such agent.
5. None of the Defendants in this matter have waived service of process by the procedure outlined for doing so in the Federal Rules of Civil Procedure.
6. The Summons and Complaint in this matter have not been personally served upon either of the individual Movants, as prescribed by Federal Rule of Civil Procedure 4(e) for service upon an individual within a Judicial District of the United States,
7. The Summons and Complaint in this matter have not been served upon either “Adriana Teran” (i.e., the erroneously identified proprietor/agent of the sole proprietorship identified as a Defendant in this matter), or upon Luis Roberto Maestre, the admitted current custodian of this sole proprietorship.
8. The Court should hold that Plaintiff’s attempted service is ineffective with respect to named individual Defendants Luis Maestre and Adriana Teran; or with respect to Defendant La Linda Michoacana; and that therefore, the Movants, including Defendant La Linda Michoacana, are not within the personal jurisdiction of the Court. Accordingly, the Complaint should be dismissed.

WHEREFORE, Movants respectfully request that the Court:

1. Dismiss the captioned case as to all named Defendants; and
2. Grant such other or further relief as the Court deems just and proper.

Respectfully submitted, this the 16th day of February, 2018.

THE LAW OFFICE OF D. CHRISTOPHER OSBORN, PLLC.

By: /s/ Christopher C. Peace

Christopher C. Peace / NC State Bar No. 43855

cpeace@osbornconflictresolution.com

D. Christopher Osborn/State Bar No. 22237

chris@osbornconflictresolution.com

Attorneys for Defendants

308 E. Worthington Avenue

Charlotte, North Carolina 28203

Telephone: 704-800-0277

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has this day duly served a copy of this **MOTION TO DISMISS PURSUANT TO RULE 12(B)(2)** to counsel for Plaintiff via the electronic filing system:

Albert Allan
Allan Law Firm, PLLC
409 East Boulevard
Charlotte, NC 28203

Stephen L Anderson - attorneys@brandxperts.com

THIS the 16th day of February, 2018.

Christopher C. Peace

Christopher C. Peace [electronic signature]